

Message Text

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PAGE 01 STATE 193946
ORIGIN EB-08

INFO OCT-01 EUR-12 ISO-00 L-03 FEA-01 ERDA-05 AID-05
CEA-01 CIAE-00 COME-00 DODE-00 FPC-01 H-01 INR-07
INT-05 NSAE-00 NSC-05 OMB-01 PM-05 USIA-06 OES-07
SP-02 SS-15 STR-04 TRSE-00 ACDA-07 /102 R

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R 161747Z AUG 77
FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA

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E.O. 11652: GDS

TAGS: ENRG, CA

SUBJECT: REQUEST FOR AUTHORITATIVE REACTION TO SENATOR
STEVENS' PIPELINE TREATY RESERVATIONS

1. REGARDING LEGALITY OR 200 MILLION DOLLARS SOCIO-ECONOMIC
FUND UNDER TREATY, BETTER LEGAL VIEW IS THAT THE FUND IS
NOT A CHARGE ON PIPELINE WITHIN MEANING OF ARTICLE 3, BUT
IS A CONDITION OF CONSTRUCTION GOVERNED BY ARTICLE 6. SUCH
A CONDITION MUST NEVERTHELESS BE CONSISTENT WITH PRINCIPLES
OR NONDISCRIMINATION OF ARTICLE 3, AND THUS PRESENTS
SIMILAR QUESTION. BASICALLY ISSUE IS WHETHER THIS CHARGE
IS IMPOSED ON SIMILAR PIPELINES. STEVENS, SPARKMAN COLOQUY
FOCUSED ON SIZE OF PIPELINE ARGUING THAT LARGER SIZE OF
ALCANS PIPELINE DOES NOT MEAN IT IS NOT SIMILAR TO SMALLER
GAS LINES. DEPARTMENT AGREES THAT PIPELINES OF DIFFERENT
DIAMETER MAY BE SIMILAR TO A 48 INCH LINE WITHIN MEANING OF
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PAGE 02 STATE 193946

TREATY. HOWEVER STEVENS CONCLUSION THAT ALL GAS PIPELINES
IN CANADA MAY BE TREATED AS SIMILAR TO PROPOSED ALCAN-LYNE
IS TOO BROAD. THE FACT THAT ALCAN LINE GOES THROUGH NATIVE
COMMUNITIES OF FAR NORTH MAY WELL BE TAKEN TO MEAN THAT THE
ALCAN LINE IS NOT SIMILAR TO OTHER GAS LINES FOR PURPOSES
OF A CHARGE DESIGNED SPECIFICALLY TO DEAL WITH NORTHERN
NATIVE COMMUNITY DISLOCATIONS. IF AMOUNT AND USE OF FUND IS

IN FACT TIED TO UNIQUE PROBLEMS OF NORTHERN COMMUNITY DIS-
LOCATIONS, CANADA MAY HAVE BETTER LEGAL CASE. ALTHOUGH
NORMALLY STEVENS STATEMENT ENTITLED TO SOME MEIGHT
IN CONSTRUING TREATY, SENATOR BAYH MADE STATEMENT COMING
TO OPPOSITE CONCLUSION. IN OUR INTERPRETATION OF TREATY,
THEREFORE, WE DO NOT REGARD STEVENS STATEMENT AS BINDING
OR ENTITLED TO PARTICULARLY SIGNIFICANT WEIGHT.

2. STEVENS ALSO MADE POINT THAT MANY ISSUES UNRESOLVED,
INCLUDING NATIVE CLAIMS, FINANCING, LIMITATIONS ON
CANADIAN JUDICIAL REVIEW, FUTURE PIPELINE EXPANSIONS,
TARIFF STANDARDS AND RATES, PROVINCIAL TAXATION AND
CANADIAN LABOR AND CONTENT REQUIREMENTS. STEVENS AND
SPARKMAN CONFIRMED THAT IF THESE ITEMS ARE RESOLVED BY
PROTOCOL OR AGREEMENT THAT WILL COMMIT UNITED STATES, THE
PROTOCL OR AGREEMENT WILL BE SUBMITTED TO SENATE FOR
RATIFICATION. DEPARTMENT VIEWS THIS AS REITERATION OF
POINT PREVIOUSLY MADE IN DEPARTMENT TESTIMONY THAT ANY
PROTOCOL WHICH INVOLVES SIGNIFICANT NEW COMMITMENT OF
U.S.G. WOULD BE SUBMITTED TO SENATE FOR RATIFICATION.

3. DEPARTMENT ALSO REGARDS STEVENS-SPARKMAN COLOQUY ON
HOLD HARMLESS PROPOSAL AS REITERATION OF CLEAR CANADIAN
FEDERAL GOVERNMENT RESPONSIBILITY FOR ANY TREATY VIOLATION
CAUSED BY PROVINCIAL TAXATION. THIS WAS MADE CLEAR TO
CANADIANS THROUGHOUT NEGOTIATIONS, REITERATED IN DEPARTMENT
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PAGE 03 STATE 193946

TESTIMONY BEFORE SFRC, AND SHOULD NOT BE CONTROVERSIAL WITH
CANADIANS.

4. ABOVE INFORMATION SUPPLIED FYI ONLY. DEPARTMENT
CONTINUES TO CONSIDER NO USEFUL PURPOSE COULD BE SERVED
BY PUBLIC USG COMMENT ON IMPORT OF STEVENS-SPARKMAN
DIALOGUE. VANCE

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Message Attributes

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Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PIPELINES
Control Number: n/a
Copy: SINGLE
Sent Date: 16-Aug-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Drafter: PTRIMBLE
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Executive Order: GS
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Expiration:
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From: STATE
Handling Restrictions: n/a
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Litigation Codes:
Litigation History:
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